Supreme Court, U.S.
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No. 98-851

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

REUTERS TELEVISION INTERNATIONAL, LIMITED; VISNEWS INTERNATIONAL (USA), LIMITED; REUTERS AMERICA HOLDINGS, INC.; REUTERS AMERICA, INC.,

Petitioners,

vs.

LOS ANGELES NEWS SERVICE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the decision of the Court of Appeals reported at 149 F.3d 987 (9th Cir. 1998) reversing the district court's granting of partial summary judgment on behalf of Petitioners Reuters Television International, Limited; Visnews International (USA), Limited; Reuters America Holdings, Inc.; Reuters America, Inc., which excluded all damage claims against Petitioners for their unauthorized uses overseas of Respondent news organization's copyrighted video taken during the 1992 Los Angeles Riots, entitled "Beating of Reginald Denny" and "Beating of Man in White Panel Truck," is a reasonable application of United States copyright law when it was based upon, and required, direct and completed infringements within the United States for the purpose of enabling Petitioners' unauthorized and intended satellite transmissions from New York to the Petitioners' international subscribers and only allow the copyright holder to obtain all damages flowing from the domestic act of infringement so as to protect the copyright holder and to encourage intellectual creativity on behalf of the public;

2. Whether the decision of Court of Appeals affirming the trial court's ruling that Petitioners were liable as contributory infringers due to their instruction to the European Broadcasting Union to copy respondent's copyrighted videos to enable the E. B.U. to make a satellite transmission to Europe on behalf of Petitioners to their subscribers around the world was properly affirmed as finding no clear error of the trial court's ruling that Petitioners had waived any defense to the claim of contributory infringement at trial.

PARTIES TO THE PROCEEDING AND DESIGNATION OF CORPORATE RELATIONSHIPS

Petitioners Reuters Television International, Limited; Visnews International (USA), Limited; Reuters America Holdings, Inc.; Reuters America, Inc., were the appellees and cross-appellants in the Court of Appeals and the defendants in the District Court. Respondent Los Angeles News Service was the appellant and cross-appellee in the Court of Appeals and the plaintiff in the District Court.

Respondent Los Angeles News Service is a sole proprietorship owned by Robert and Marika Tur and not related to any corporations.

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CONCISE STATEMENT OF THE CASE

A. Introduction

The present action is a copyright infringement case in which Respondent Los Angeles News Service (hereinafter "LANS"), an Emmy winning independent and accredited news organization operating as a sole proprietorship owned by Robert and Marika Tur, sued Petitioners REUTERS TELEVISION INTERNATIONAL, LIMITED; VISNEWS INTERNATIONAL (USA), LIMITED; REUTERS AMERICA HOLDINGS, INC.; REUTERS AMERICA, INC., (hereinafter "REUTERS"), a group of affiliated electronic news agencies which provide video and film to their subscribers for the subscribers' use in television and other news media throughout the world. LANS sued REUTERS for their unauthorized copying, and dissemination of LANS' copyrighted videos taken during the 1992 Los Angeles Riots, entitled "Beating of Reginald Denny" and "Beating of Man in White Panel Truck," which were copied by REUTERS in the United States to effectuate REUTERS' unauthorized and intended satellite transmissions from New York to REUTERS' international subscribers.

The United States District Court granted partial summary judgment in favor of REUTERS to exclude damages overseas, extraterritorial damages, caused by the domestic infringement which enabled REUTERS to duplicate Respondent's videos by satellite transmission to REUTERS subscribers around the world. The action was then tried to the court which found in favor of Respondent LANS that it suffered four domestic infringements to its copyrighted works by REUTERS, two direct infringements and two infringements by the REUTERS' agents, the European Broadcasting Union, for which it was contributorily liable, when these entities made videocassette

copies of the copyrighted works to enable REUTERS to make satellite transmissions of the works to the REUTERS subscribers around the world. The court awarded $60,000 in statutory damages for the domestic infringements since LANS could not prove actual damages for the domestic infringements and "extraterritorial" damages were excluded. The trial court found that REUTERS had waived any defenses to the finding of contributory infringement since the REUTERS defendants did not raise the issue during trial until the closing arguments and had submitted proposed findings of fact and conclusions of law calculating statutory damages based upon four domestic infringements.

Pertinent here, LANS appealed from the ruling on partial summary judgment barring extraterritorial damages while REUTERS appealed the trial court's finding there was no "fair use" and the damage award which made it contributorily liable for the two domestic infringements of their agent, the European Broadcast Union, and the amount of the statutory award.

The Court of Appeals in its published decision of July 13, 1998, as amended on denial of rehearing and suggestion for rehearing *en banc* on August 25, 1998, reversed in part and affirmed in part. It reversed the ruling barring LANS' claim for extraterritorial damages which flow directly from the domestic infringements and affirmed the trial court's findings barring the "fair use" defense and the waiver by REUTERS of any defense to their contributory infringement for the copies made by their agent, the European Broadcast Union.

B. Concise Statement of Facts

Respondent wishes to point out to this Court that it believes the Petitioners set forth disputed facts as well as unsupported assertions of fact, while omitting important facts necessary for

the Court's determination whether the appellate court reasonably applied United States copyright law to their analysis of the domestic infringements by Petitioners and the claim for damages by Respondent which flowed directly from the domestic infringements. Additionally, more detail is needed to analyze the appellate court's refusal to overturn the trial court's finding that the REUTERS defendants were contributorily liable for the domestic infringements made at REUTERS' request to enable REUTERS to transmit LANS' videos to REUTERS' subscribers worldwide. Respondent now sets forth these facts more fully with support from the record.

"CR" references are to the District Court record docket number; "ER" references are to the Excerpts of Record filed in the appeal.

1. *The Parties.*

Los Angeles News Services ("LANS"), is an Emmy Award winning, family-owned accredited news organization which since 1979, has covered news events with videotape, film and still photography. "Los Angeles News Service" is a fictitious business name used by Bob and Marika Tur, husband and wife.

REUTERS TELEVISION INTERNATIONAL, LIMITED; VISNEWS INTERNATIONAL (USA), LIMITED; REUTERS AMERICA HOLDINGS, INC.; REUTERS AMERICA, INC., (hereinafter "REUTERS"), are a group of affiliated news services which, for a fee, provide news stories and video to television and other news media, throughout the world. [CR 96, ER 473].

2. *LANS Created the Copyrighted Videos During the Los Angeles Riots and REUTERS Infringed By Making Unauthorized Duplicates to Enable REUTERS to Transmit the Videos to Their Subscribers*

On April 29, 1992, LANS, owned by Bob Tur and his wife Marika, provided live video, shot by Marika, and audio coverage, narrated by Bob, reduced to videotape, of the Los Angeles Riots from the vantage point of their helicopter hovering over the intersection of Florence and Normandie, the heart of the riots. LANS videotaped two copyrighted works, "The Beating of Reginald Denny" and "Beating of Man in White Panel Truck." LANS gave a restricted license for National Broadcasting Company to show the works on its network only. [96, ER 473-476].

The present action arose the next day, April 30, 1992, when REUTERS received a LANS prohibited electronic transmission from the National Broadcasting Company to REUTERS of the two copyrighted LANS videos of incidents during the Los Angeles Riots of 1992: "Beating of Reginald Denny" and "Beating of Man in White Panel Truck." [CR 96, ER 473, 478]. REUTERS' offices in New York City received the transmission via fiber optic cable. REUTERS then made a cassette copy of the videos without LANS' permission which it used to electronically transmit the videos by fiberlink to their agent in New York, the European Broadcasting Union, which in turn made another cassette copy which it used to transmit the videos by satellite to the main REUTERS offices in London, England, where REUTERS re-transmitted the videos to its subscribers throughout the world. REUTERS transmitted the videos by satellite to its subscribers in Europe and Africa on its early morning feed, and then to Japan, Latin America, and Asia, all on April 30, 1992. [CR 45, 80, 96, ER 266, 395, 397, 478-479].

REASONS FOR DENYING THE WRIT

I.

SUMMARY OF ARGUMENT

In this copyright action, there is no conflict of decisions between the circuits (only the Second and Ninth Circuits have ruled on the present issue) or involving a question of exceptional importance. The present decision does not conflict with any other decisions of this Court on the application of damages to copyright infringements, nor is this decision one of such exceptional importance, either extending or limiting damages, to warrant the granting of the petition.

Moreover, the Petitioners are in error when they argue the appellate court applied United States copyright law extraterritorially. Instead, an examination of the opinion shows the appellate court carefully examined all relevant domestic factors and followed a line of cases from the Second Circuit for the past 60 years, beginning with an opinion by Judge Learned Hand. The court explicitly limited its decision to the recovery of "damages flowing from exploitation abroad of the domestic acts of infringement committed by defendants [REUTERS]." (App. at 9).

II.

THE DECISION IS NOT IN CONFLICT WITH ANY PREVIOUS DECISION OF THIS COURT

In the present case, the appellate court held that the copyright holder may recover all damages which flow from a direct copyright infringement within the United States. (App. at 9). This decision comports with other United States Supreme

Court decisions regarding the presumption of Congress for being concerned with domestic conditions. *Equal Employment Opportunity Commission v. Arabian American Oil Company*, 499 U.S. 244, at 248, (1991) (quoting *Foley Brothers, Inc. v. Filardo*, 336 U.S. 281, at 285 (1949)).

In the decision before this Court, the holding applies only when there is a completed domestic infringement which then enables further damages flowing directly from the domestic infringement. Since the holding applies only where there is a completed domestic infringement within United States, the holding only allows for the recovery of all damages which flowed from that domestic infringement. Where the damages were suffered is actually irrelevant. What is determinative is where the direct infringement occurred which started the direct causal link. Damages can flow from that domestic infringement which take place beyond the borders.

Since the court required the enabling infringement to be within the United States, the holding merely allows for a complete recovery of all damages which flow from that infringement, no matter where the damages occur, thereby offering the full protection of the Copyright Act as intended for the copyright holder. The opinion applies the Copyright Act to the actions which occurred within United States which caused the damage. There is no extraterritorial enforcement of the Copyright Act, it is a domestic application.

Nowhere in the subject decision, nor in any claim within the particular facts of this case, is it claimed that Los Angeles News Service sought to sue each and every individual subscriber of REUTERS around the world. No, in fact, Los Angeles News Service only would be awarded damages against the perpetrators of the infringements within United States which caused damages throughout the world.

We should note that there is no clash of laws between nations under the decision of the appellate court. The decision merely allows the copyright owner to secure all damages which flow from the direct infringement within the territorial boundaries of United States. Applying the holding of the Court of Appeal below, it is unnecessary to litigate throughout the world, or to claim copyright infringement for each individual user throughout the world. The copyright holder can simply sue the original wrongdoer for all damages which flowed from the original completed infringement within territorial boundaries of United States. This is in keeping with the decisions of the Supreme Court in interpretation of Congressional intent to avoid conflict in the application of United States law and that of other nations.

With the present decision, there is no unintended clash between the laws of United States regarding copyright and those of other nations which could cause international discord. In fact, the holding prevents such an occurrence because the original infringer, infringing within United States, would be liable for all damages which flowed from the infringement. The REUTERS defendants were found liable to Los Angeles News Service for the direct infringements of the copyrighted video works. The decision allows for an economical, judicious and expedited resolution of all disputes by having it in one forum, the United States, regarding all damages which flowed from the infringement. Worldwide litigation is unnecessary to recover all damages, with the entire action litigated economically in one forum. There would be no need to allege infringements throughout the entire world which would involve a multitude of jurisdictions and a multiplicity of laws, many of which would conflict. The decision gives clear notice to an infringer that if it makes a completed infringement within the territorial boundaries of the United States which has ramifications throughout the world in its distribution, it will be exposed to

damages for that distribution. The copyright owner may sue within United States for all damages. This is an economical, judicious, and prudent way to interpret present copyright law.

III.

THE CASE DOES NOT SET A PRECEDENT OF EXCEPTIONAL IMPORTANCE

Respondent views the present decision as applying current law to the facts of this case with no precedential extension nor limitation to the application of damages to copyright law. In fact, the Court of Appeal has merely adopted the same analysis which the Second Circuit has used for the past 60 years, which this Court has previously affirmed by this Court's denial of a writ of certiorari in *Sheldon v. Metro-Goldwyn Pictures Corporation*, 106 F.2d 45 (2d Cir. 1939), *aff'd*, 309 U.S. 390 (1940). A review of the history of this line of cases and its adoption by the Ninth Circuit begins below with the open question left by the Ninth Circuit in *Subafilms* to its answer in the present action.

The decision stemmed from the trial court's misapplication of the holding in *Subafilms, Ltd. v. MGM-Pathe Communications*, 24 F.3d 1088 (9th Cir. 1994), which stands for the proposition that *wholly extraterritorial* acts of infringement are not cognizable under the Copyright Act, when the trial court held that REUTERS was not liable for its admitted acts of transmission of LANS videos from the United States to its subscribers abroad. However, this scenario was not addressed in *Subafilms*, which specifically left open the question of how to deal with such domestic infringing activity which enables unauthorized uses abroad. Here, unlike *Subafilms*, the domestic infringements enabled the reproduction of the works abroad. These "predicate acts" allowed the Court of Appeal to adopt the line of reasoning used by the Second Circuit for the last 60 years.

In *Subafilms*, Subafilms and Hearst Corporation sued MGM/UA for copyright infringement for the foreign and domestic distribution of the 1966 Beatles' film, "Yellow Submarine." Overruling a portion of an earlier Ninth Circuit decision (*Peter Starr Prod. Co. v. Twin Continental Films, Inc.*, 783 F.3d 1440 (9th Cir. 1986)), the court concluded that

> there can be no liability under the United States copyright laws for *authorizing* an act that itself could not constitute infringement of rights secured by those laws, and that *wholly extraterritorial* acts of infringement are not cognizable under the Copyright Act . . .

Subafilms, Ltd. v. MGM-Pathe Communications, 24 F.3d 1088, 1090 (9th Cir. 1994) (emphasis added).

However, the court specifically declined to rule on the application of the Copyright Act if instead of merely "authorizing" an act within the United States for infringements abroad, if an actual infringement occurred within the United States which enabled the infringer to exploit the copyrighted work abroad. The Court summarized its position:

> Whatever the merits of the Second Circuit's rule, and we express no opinion on its validity in this circuit, it is premised on the theory that the copyright holder may recover damages that stem from a direct infringement of its exclusive rights that occurs within the united States. *See, Robert Stigwood*, 530 F.2d at 1101; *Sheldon v. Metro-Goldwin Pictures Corp.*, 106 F.2d 45, 52 (2nd Cir 1939) (L. Hand, J.) ("The negatives were 'records' from which the work could be 'reproduced', and it was a tort to make them in this country. The plaintiffs acquired an

> equitable interest in them as soon as they were made, which attached to any profits from their exploitation. . . ."), *aff'd*, 309 U.S. 390, 60 S.Ct. 681, 84 L.Ed. 825 (1940); *see also, Ahbez v. Edwin H. Morris & Co., Inc.*, 548 F. Supp. 664, 667 (S.D.N.Y. 1982); *Famous Music Corp. v. Seeco Records, Inc.* 201 F. Supp. 560, 568-69 (S.D.N.Y. 1961). In these cases, liability is not based on contributory infringement, but on the theory that the infringing use would have been actionable even if the subsequent foreign distribution that stemmed from that use never took place. *See*, e.g., *Famous Music*, 201 F.Supp. at 569 ("[T]hat a copyright has no extraterritorial effect does not solve the problem of [whether liability should attach for preparing within the United States tapes that were part of a] manufacture [completed abroad] since plaintiffs seek to hold defendant for what it did here rather than what it did abroad." (emphasis in original)). These cases, therefore, simply are inapplicable to a theory of liability based merely on the authorization of non-infringing acts.

Subafilms, Ltd. v. MGM-Pathe Communications, 24 F.3d 1088, 1094 (9th Cir. 1994).

Here, REUTERS completed the duplication (infringement) of the videos on a cassette within the United States which enabled it to make the electronic transmissions to its agent the European Broadcasting Union, and to transmit the videos by satellite from the United States to its offices abroad which re-transmitted it around the world to REUTERS subscribers. The infringements proven by LANS to be made within the United States allowed the copyrighted video works to be "reproduced abroad" causing the damage to LANS, just as Judge Learned Hand contemplated in *Sheldon* in 1939.

In the present case, the Court of Appeal examined the facts and found the REUTERS defendants' acts of domestic infringement, the copying of the video works onto videocassettes to enable them to send the works by satellite transmission to their subscribers, were enabling acts to which liability would attach, answering the question the appellate court had left open in *Subafilms*. For instance, in the referenced above *Update Art, Inc. v. Modiin Pub. Ltd.*, 843 F.2d 67 (2nd Cir. 1988), an American company sued an Israeli company for including as an insert in an Israeli newspaper an unauthorized full page full reproduction of a poster entitled "Ronbo," a poster for which Update had exclusive contract rights for worldwide publication. Concluding that Update's claim was cognizable under American copyright laws, the court stated:

> As the applicability of American copyright laws over the Israeli newspapers depends on the occurrence of a predicate act in the United States, the geographic location of the illegal reproduction is crucial. If the illegal reproduction of the poster occurred in the United States and then was exported to Israel, the magistrate properly could include damages accruing from the Israeli newspapers. If, as appellants assert, this predicate act occurred in Israel, American copyright laws would have no application to the Israeli newspapers.

Update Art, Inc. v. Modiin Pub. Ltd., 843 F.2d 67, 73 (2nd Cir. 1988).

The question of unauthorized uses of copyrighted material abroad was also considered in *Famous Music Corporation v. Seeco Records, Inc.*, 201 F. Supp. 560 (S.D. N.Y. 1961). There, musical composition copyright owners sued a record company for copyright violation. Seeco was recording the various

compositions of plaintiffs, manufacturing master recordings thereof on tapes and making and exporting copies to foreign countries as a means through which records were pressed. Defendants shipped tape recordings of renditions of plaintiffs' compositions to persons in foreign countries, which recordings were used by such persons to manufacture phonograph records. Finding a copyright violation, the court observed:

> The preparation of the tapes (which are sent to persons abroad to be used by said persons to manufacture phonograph records), which contain renditions of plaintiffs' compositions, is a violation of Section 101(e).
>
> The act of the defendant in producing the tapes of plaintiffs' compositions in the United States clearly involves defendant as a joint tort-feasor in "manufacture." (citations omitted)
>
> . . .
>
> It is plain that the act of defendant here was a part of the manufacture.
>
> . . .
>
> A holding in *Capitol Records v. Mercury Records Corporation*, 2 Cir., 1955, 221 F.2d 57, that a copyright has no extra-territorial effect, does not solve this problem of manufacture since plaintiffs seek to hold defendant for what it did here rather than what it did abroad.
>
> Accordingly, this court holds that the act of defendant in preparing the tape was a part of the

> manufacture and, consequently, an infringement for which it should respond under Section 101(e).

Famous Music Corporation v. Seeco Records, Inc., 201 F. Supp. 560, 568-569 (S.D. N.Y. 1961).

Finally, Judge Learned Hand in *Sheldon v. Metro-Goldwyn Pictures Corporation*, 106 F.2d 45 (2d Cir. 1939), *aff'd*, 309 U.S. 390 (1940) considered this issue which involved a dispute over royalties due from exhibition of a motion picture. One of the issues concerned the profits made from exhibiting the picture outside the United States. The court observed that it could not say that the exhibition of the film abroad was a tort.

> However, exhibition is not the only act forbidden by the Copyright Act; Section 1(d), 17 USCA § 1(d), gives to the author the exclusive right, not only to perform a dramatic work, but "to make * * * any transcription or record thereof * * * from which, in whole or in part, it may in any manner * * * be * * * reproduced." The Culver Company made the negatives in this country, or had them made here, and shipped them abroad, where the positives were produced and exhibited. The negatives were "records" from which the work could be "reproduced," and it was a tort to make them in this country. The plaintiffs acquired an equitable interest in them as soon as they were made, which attached to any profits from their exploitation, whether in the form of money remitted to the United States, or of increase in the value of shares of foreign companies held by the defendants.

Sheldon v. Metro-Goldwyn Pictures Corporation, 106 F.2d 45, 52 (2d Cir. 1939), *aff'd*, 309 U.S. 390 (1940).

Here, LANS proved at trial that REUTERS completed the "predicate acts" within the United States. REUTERS admitted copying the unauthorized transmission it received from the National Broadcasting Company and then REUTERS itself transmitted the copyrighted works within New York and then to overseas and rebroadcast in Europe and Asia. This electronically encoded the LANS videos for later duplication, simply a more modern version of the making of a film negative in *Sheldon* or the masters in *Famous Music*, and using the United States as a base, used a satellite transmission to Europe, Asia, North America to reproduce and copy the videos in Europe. Absent these predicate acts, LANS would not have suffered the damage to its copyrights here and abroad.

The unauthorized duplication of LANS' copyrighted videos is an infringement. 17 U.S.C. § 106. The REUTERS duplications if allowed would destroy LANS' market for the videos abroad, a self-evident proposition since REUTERS supplied the market without authorization of LANS.

The decision below adopts the Second Circuit's reasoning, by limiting the claim of damages to that which flowed from the domestic act of infringement. This is not, as is argued by petitioners, an exception to the territoriality rule. It is simply a reasonable application of damages for the domestic act of infringement which enabled unauthorized usages beyond the border.

IV.

THE DECISION IS NOT IN CONFLICT WITH ANY EXISTING OPINION OF ANOTHER COURT OF APPEALS OF NATIONAL APPLICATION WHICH REQUIRES NATIONAL UNIFORMITY

While the Copyright Act is applied nationally, there is no conflict of decisions in any circuit regarding the application of damages which flow from a completed act of infringement within the United States.

The court did not utilize decisional law from other jurisdictions which was in conflict, but only Second Circuit opinions, starting with *Sheldon*, *supra*, which are in accord, since there really is no conflict between the circuits. It applied present law about which there is no conflict in reaching its decision. There is no need for the Supreme Court to resolve any conflict either within the circuit or in other circuits.

V.

REUTERS' DEFENSE TO A FINDING OF CONTRIBUTORY INFRINGEMENT WAS WAIVED IN THE TRIAL COURT AND WAS NOT PROPERLY RAISED BELOW

Finally, Petitioners argue that the Court of Appeal did not address their claim that they should not be held contributorily liable for the usages of their agent, the European Broadcasting Union or, by implication, their subscribers.

It should be noted that the Court of Appeal decision does not, despite Petitioners' complaints, apply to the individuals who utilized Respondent's videos overseas and thereby allow

direct prosecution of and application of United States copyright law to wholly extraterritorial acts. Such a prosecution was not even attempted by Respondent because those individual companies had no direct infringing activities within United States. Respondent Los Angeles News Service prosecuted only the direct infringers within United States from which all damages flow. The direct infringers, the Petitioners REUTERS, were called before the trial court by the Respondent for the remedy of damages. It is a misleading assertion by Petitioners now to claim that Court of Appeals opinion would create any conflict in laws with other jurisdictions by the application of the Copyright Act to REUTERS' actions when no foreign defendants were ever named or contemplated in the original lawsuit below. Petitioners again are trying to create an issue which does not exist. REUTERS' scenario of foreign conflicts of laws has no relation to the actual decision of the appellate court.

VI.

THERE IS NO NEED TO DISTINGUISH IN THIS CASE BETWEEN A DIRECT INFRINGER AND A CONTRIBUTORY INFRINGER

Here, it was established at trial that the REUTERS defendants made video cassette copies of respondent's videotaped works, LANS' L.A. Riots coverage, for the direct and sole purpose of transmitting the copyrighted footage overseas to REUTERS' subscriber's television stations. The direct infringement is clear, the cassettes were made in New York City by Petitioners or their agents, for the sole purpose of supplying Petitioners' subscribers with duplicates via a satellite transmission, the direct and intended result of the original infringing act within the United States. There is no break in the chain of causation. Their direct infringements caused the

further uses by petitioners' subscribers and those uses were intended by REUTERS.

There is no logical reason why REUTERS, as the direct infringers, should not be held liable in the United States for violation of United States copyright law for all such uses which were intended by REUTERS. It is clear that without the direct infringement within United States there would have been no other uses, as intended by the directly infringing REUTERS petitioners. There is no need to claim that the subscribers to the REUTERS' services are contributory infringers, since it is all part and parcel of the direct infringement within the United States, with the subscribers being mere agents of the direct infringers.

This application of liability for the acts of the REUTERS agents by the Court of Appeals is not in conflict with any United States Supreme Court decisions. Petitioners argue that the decision is in conflict with *Sony Corporation of America v. Universal City Studios, Inc.*, 464 U.S. 417 (1984). This is in error. In *Sony*, the copyright holders attempted to hold the manufacturer of home video recording equipment which could be used to make duplicates of television programs liable for copyright infringement. The Supreme Court held the manufacture of the equipment could not be held liable as a contributory infringer since there were substantial numbers of copyright holders who did not object to their programming being time-shifted for private viewing and the copyright holders did not show that such use would cause harm to the potential market for the copyrighted works.

Here, we have a completely distinct set of facts with virtually no correlation with those faced by this court in *Sony*. Petitioners themselves are direct infringers who copied and supplied the Los Angeles News Service videos to their

subscribers for the intended use of the subscribers, the very market which Los Angeles News Service also sought to market its videos. The copyright holder, Respondent herein, does object to such a use and the market is damaged by the use intended by the Petitioners. Moreover, the subscribers are the direct agents, through their subscriptions to the service of Petitioners, of the direct infringers, Petitioners herein, not disconnected home viewers who were the intended recipients of free programming which will be merely time-shifted for more convenient viewing. There is simply no conflict between the decisions.

In the REUTERS petitioners, we have direct infringers who by their acts enabled the intended further uses by subscribers to the news services of REUTERS. There is no liability placed directly on those individual subscribers. Instead, the Court of Appeal simply allows all liability to go directly to the original direct infringers, the petitioners herein.

CONCLUSION

As has been shown above, the Court of Appeal decision does not conflict with any decisions of any other circuits, nor with any Supreme Court decision, nor is it of such exceptional importance to merit the granting of certiorari.

The Court of Appeals' decision is its answer to the question which the court previously and explicitly reserved in its *Subafilms* decision, which is so heavily relied upon by the petitioners. The decision clarifies that infringers will be held responsible for all damages which flow directly from their act of domestic infringement. The present decision is limited to those copyright holders who can demonstrate the enabling infringement was completed within the United States and all damages must flow from that infringement. All such damages are recoverable under the Copyright Act as an application of

United States law to the direct infringement. The decision will prevent conflicts in law by eliminating the necessity of having suits brought in each country against the direct infringers, Petitioners herein, where the copyrighted works were transmitted instantaneously in this electronic age where the borders of countries no longer form barriers to intellectual property.

What is more, the Court of Appeals decision will prevent the necessity of trying to litigate in each individual country because the individual users throughout the world will not, and do not, have to be sued for their uses, but only the original infringer, in this case the REUTERS defendants, a multinational group of corporations who transmitted Respondent's videos to their subscribers around world from New York after making two videocassette copies which were specifically made to enable REUTERS to complete the satellite transmissions for the benefit of their subscribers. As such, these original infringers should be held liable for all damages which flowed from the direct infringements. The decision of Court of Appeals breaks no real new ground, but simply clarifies the law that all damages flowing from the domestic acts of infringement are potentially recoverable.

The infringement must be completed within the United States for the decision to apply. The decision does not apply United States law to each individual user throughout the world, but merely confirms that United States copyright holders have a remedy in this electronic age to hold the infringers responsible for all damages which flow from and are enabled by the direct infringement within the United States.

As demonstrated above, the present appellate court's decision of July 13, 1998, as amended on denial of rehearing and suggestion for rehearing *en banc* on August 25, 1998, does

not meet the showing needed for a grant of certiorari: (1) the decision of the panel is not in conflict with any previous decision of this court; (2) the case does not set a precedent of exceptional importance; and (3) the decision is not in conflict with any existing opinion of another court of appeals of national application which requires national uniformity.

For these reasons, we request this Court deny the petition for a writ of certiorari and allow Respondent to pursue its remedies before a jury in the district court.

Respectfully submitted,

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